THE
MADRAS LAW JOURNAL.

VOL.] MARCH, 1929 [LVI.

REFORMS IN THE HINDU LAW OF WILLS, MAINTENANCE AND RESIDENCE.

DESIRABILITY OF EMPOWERING A CO-PARCENER TO MAKE A WILL OF HIS SHARE IN JOINT PROPERTY.—As the law stands at present, a co-parcener cannot execute a will, in respect of his share or a portion thereof in joint property, in favour of any person whatsoever, whether related or not related, whether male or a female. For example, it has been held that a will made by a Hindu father, who is joint with his infant son, bequeathing certain family property to his widow for her maintenance is invalid and inoperative as against the son, although it would have been a proper provision made by the father during his life-time. *Subbarami Reddi* v. *Ramamma.*[1] Similarly a will by which a testator gives part of his property to his intended adopted son, part to his widow for life, part to kindred, and part to charity is not binding upon the adopted son, although, before the adoption took place, the natural father executed a deed by which he consented to the provisions of the will and gave his son in adoption subject thereto. *Krishnamurthi Aiyar* v. *Krishnamurthi Aiyar.*[2] A member of a joint family who has got no son and whose estate will pass by the operation of the rule of survivorship to his joint brother cannot, by will, give his share in the property to his widow or daughter as stated already, but if a few minutes before the execution of his will he makes an unequivocal declaration of his intention to separate as was the case in *Girja Bai* v. *Sadashiv*[3] then his share passes to his widow and daughter, even if he does not make will in their favour. It is not desirable that such a declaration of an intention to separate should be the condition precedent to the validity of the will. The will itself is a suffi-

1. (1920) I.L.R. 43 M. 824.
2. (1927) L.R 54 I.A. 248: I L.R. 50 M. 508 at 509 53 M.L J. 57 (P.C.)
3. (1916) L.R. 43 I.A. 151: I.L.R. 43 C. 1031: 31 M.L.J. 455 (P.C.)

cient and unambiguous declaration of his intention to treat himself as a person entitling to dispose of the property as if he were a tenant-in-common and should be treated as valid.

2. DESIRABILITY OF RESTRICTING THE POWERS OF A TESTATOR IN RESPECT OF HIS SEPARATE OR SELF-ACQUIRED PROPERTY.— Though in respect of joint property a co-parcener cannot execute a will, he can execute a will in respect of his self-acquired property and can, by such a will, commit great injustice; for example, if a person possesses only self-acquired property, he can by his will entirely disinherit his adopted son, who would not have been given in adoption to him at all if he were to exercise such a power, to the knowledge of the natural parents of the adopted son. That he can disinherit his natural son, his widow, his daughter or any other near relations goes without saying. Mr. Mayne in his Hindu Law discusses the question about the origin of Hindu wills at an elaborate length in paragraphs 406-408-416, pages 568-582 and states his conclusion to the effect that though the true origin of the testamentary power is to be sought for in the Brahmanical influence, the example of Englishmen making wills must have acted as a cause of its being adopted by the Hindus to whose law the idea of a will was entirely unknown. If the source of Hindu wills is to be traced, not to the authorities on Hindu law, but to some external influence, it is quite certain that its origin from the English source would be considered to be more plausible than its origin from the Mahomedan law, because the Mahomedan law of wills is not so absurd as the English law, followed in the Hindu Law, is. As is often pointed out, a person can, according to English Law, ignore the needs of his own widow and family, though he must contribute towards the support of other men's widows and children towards pensions, health insurance, and free public education, etc., by means of paying the Death Duties, which sometimes rise to as much as 40 per cent. on large estates. In the disposal of his estate, the testator can act like an unchallenged autocrat by entirely rejecting the claims of his relations and dependants, by devising his entire fortune to the favourites of an hour, and even where he may be charitable in bequeathing a portion to his wife and children, the bequest may be hedged around with harsh conditions militating against the happiness of the legatees. The testator can bring ruin upon the members of his family by benefactions made in favour of public charities and may thus act contrary to the rule that charity should begin at home. The

last will and testament of a wealthy individual thus becoming a terrible source of misery has its analogue in the Roman Jurisprudence which permitted the Romans to frame their arbitrary wills according to the dictates of reason or caprice, as they thought fit. In Rome from various causes the partiality of paternal affection often lost its influence over the stern patriots of the commonwealth and the dissolute nobles of the empire; and if the father bequeathed to his son the fourth part of his estate, he removed all grounds of legal complaint. But a rich childless old man was a domestic tyrant, and his power increased with his years and infirmities. A servile crowd, in which he frequently reckoned prætors and consuls, courted his smiles, pampered his avarice, applauded his follies, served his passions, and waited with impatience for his death. The arts of attendance and flattery were formed into a most lucrative science; those who professed it acquired a peculiar appellation; and the whole city, according to the lively descriptions of satire, was divided between two parties, the hunters and their game. Yet, while so many unjust and extravagant wills were every day dictated by cunning, and subscribed by folly, a few were the result of rational esteem and virtuous gratitude. Cicero, who had so often defended the lives and fortunes of his fellow-citizens, was rewarded with legacies to the amount of a hundred and seventy thousand pounds.[4]

3. ANALOGOUS LAW REGARDING WILLS TO BE FOLLOWED — An exception to the absolute testamentary power has just been introduced in England by section 4 of the Adoption of Children Act, 1926, 16 and 17 Geo. V, c. 29, which enables a Court to make an order requiring the adoptive father to make a just provision for the adopted child at the time of adoption. A similar provision may be made in India. According to Mahomedan Law the claims of the heirs are not entirely neglected. They have got a right at least to a substantial portion of the property of the deceased. A Mahomedan can bequeath only one-third of his property and two-thirds go to the heirs. If the Hindus would have followed the principles adopted by the Mahomedan Law as they did in adopting the Mahomedan Law of Pre-emption instead of following the principles which are adopted by the English law, the disastrous consequences mentioned above arising from the absolute power of the owner to make the will would not have arisen. The rise and progress of the testamen-

4. Gibbon's *Decline and Fall of the Roman Empire,* Chap. VI, p. 159. Everyman's Library Series.

tary capacity in England has characteristically, features not quite, if at all, scientific.[5] According to the laws of other countries besides England, such a liberty in the matter of disposal of property is not permitted. In Greece, the will was valid, if the testator had no children.[6] In the United States, homesteads generally and dower estates frequently are not devisable. In some States children cannot be disinherited without good cause; and in some, children omitted in a will may still take their share. It is frequently provided that certain amount must be left to the widow. Some States require husband's consent and subscription to make a wife's will valid. In Germany, descendants, ascendants and the husband or wife are entitled to compulsory portions. But they may be deprived of these for certain specified kinds of misconduct. Subject to this a wife can will away her property without the husband's consent.[7] According to the French law, a widow is entitled as a matter of law to one-half of her deceased husband's movable property, while if there are surviving children, as much as three-quarters of the testator's estate will be distributed as the law directs, instead of under the terms of the will, and this restriction applies to *wills as well as to gifts*.[8] According to Hindu Law, a person can bequeath entirely his self-acquired property in favour of anybody, but he cannot bequeath the smallest fraction of joint family property in favour of his own widow or daughter, and a golden mean between the two would be very desirable. A member of the joint family should be allowed to execute a will of his share or a portion thereof in joint family property but in case where that will gives the estate to a stranger to the family the interest of the persons who would have inherited the share of the testator if he would have been a tenant-in-common should be protected. Similarly the powers of a testator as regards his self-acquired property should be curtailed. The testamentary capacity should extend only as regards the one-third of the rights and interests belonging to the testator and two-thirds thereof should devolve by operation of the law of inheritance.

4. MAINTENANCE OF A PREDECEASED SON'S WIDOW —It has been held that the widow of a predeceased son has no legal claim for maintenance against the separate or self-acquired property of her father-in-law.[9] If there is any case of con-

5 *Encyclopaedia of the Laws of England,* Vol. 14, p. 662
6 Plutarch's Lives, solon. Everyman's Library Series, Vol. I, p. 135.
7. *Encyclopaedia Brittanica,* Vol XXVIII, pp 658, 659 (Ed. 1911).
8. *French Civil Code,* Arts. 913—919.

sensus of opinion, where the opinion is wrong, it is here. A layman, who has got a slight knowledge of the ceremonial of marriage, will say that this is a wrong view. It should be enacted that a predeceased son's widow is entitled to maintenance out of the separate or the self-acquired property of the father-in-law and that the maintenance should be a charge on the property by operation of law.

5. It has been held by the Bombay High Court that the widow of a predeceased unseparated son has no right of maintenance from a person to whom her father-in-law has bequeathed the whole of his self-acquired property. *Bai Parvati* v. *Tarwadi Dolatram.*[10] The Madras High Court has, however, taken a contrary view in an earlier case where it was held that the right was enforceable in such a case as against volunteers. *Rangammal* v. *Echammal.*[11] As the decision in the Bombay case is likely to be followed because it is subsequent to the Madras decision, it is necessary to legislate on the point and effect should be given to the Madras view, which is more just.

6. MAINTENANCE OF WIDOWED DAUGHTER.—If a widowed daughter cannot get maintenance from her husband's family on account of there being no property and if she returns to live with her father or brother, there is a moral and social obligation, but not a legally enforceable right, to charge her maintenance upon her father's estate in the hands of his heirs. This is the view which prevails in the Bombay High Court, *Bai Mangal* v. *Bai Rukmini*[12] and was adopted by the Calcutta High Court also in a case governed by the Bengal school, where it was laid down that a *sonless widowed* daughter in *indigent* circumstances was not entitled to separate maintenance out of her father's estate which descended to his heirs. *Mokhada Dassee* v. *Nundo Lall.*[13] The Madras High Court has dissented from this view in a case which is not reported in the official reports. *Venkataranu* v. *Kotayya.*[14]

7. To be a widow is itself a misfortune, the torments of which are aggravated by there being no son to maintain her and the indigent circumstances make the matters still worse. It is necessary that the law should be changed on this point.

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9. Mayne's *Hindu Law,* paras. 451—453, pp 647—49
10. (1900) I.L.R 25 B. 263.
11 (1899) I.L.R. 22 M. 305 · 9 M.L.J. 14.
12 (1898) I.L.R. 23 B. 291.
13. (1901) I.L.R. 28 C. 278.
14. (1912) 23 M.L.J 223: 16 I.C. 139.

If a daughter is allowed to inherit as a co-heir with the son, she can maintain herself out of the property which would fall to her share. But if the daughter is not allowed to inherit as a co-heir by changing the law on the point, it should be laid down that a daughter is entitled to maintenance out of her father's estate if she cannot be properly maintained in her husband's family and such a maintenance should be declared to be a charge on the property by operation of law.

8. FIXED COURT-FEE OF TEN RUPEES FOR RECOVERY OF ARREARS OF MAINTENANCE AND FOR A DECLARATION ABOUT MAINTENANCE.—Women, who are driven to file a suit for maintenance, have generally no property out of which they can pay the Court-fees and hence they are required to sue as paupers. There are very few cases where the question of pauperism is not contested by the defendant. Even where the Court finds that the plaintiff is a pauper and allows her to sue as such, she is required to put up with great harassment. Sometimes the judge of the lower court gives a wrong decision but the order is not appealable, and though according to some courts the order is open to revision in a proper case, it is not so according to others.[15] It is necessary that in order to prevent the plaintiff being harassed, there should be an amendment in the Court Fees Act and a fixed fee of ten rupees should be levied in such cases. A clause (*vii*) should be added to Article 17 of Schedule II of the Court Fees Act for dealing with this matter. As according to clause (*v*) of Article 17, a suit to set aside an adoption can be filed on a ten rupees stamp, there should be no objection for including a suit for maintenance within the scope of that Article.

9. MAINTENANCE TO BE A CHARGE ON THE ESTATE.—It has been held that even express notice at an execution sale under a decree to the effect that a widow has a claim for maintenance upon the estate does not affect the rights of the purchaser. *Soorja Koer* v. *Nath Buksh Singh*.[16] The reason is stated to be that a Hindu widow's right to receive maintenance is considered to be a right of an indefinite character, which, unless made a charge upon property by agreement or by a decree of the court, is only enforceable like any other liability in respect of which no charge exists. *Ram Kunwar* v. *Ram Dai*.[17] It should therefore be pro-

15. Mulla's *Civil Procedure Code*, p 833

16 (1884) I.L.R. 11 C 102. 17 (1900) I.L R. 22 A. 326.

vided that where a person has got a right of maintenance out of the property belonging to a Hindu, that property will stand charged with that right by operation of law within the meaning of section 100 of the Transfer of Property Act. This will necessitate some consequential changes in section 39 of the Transfer of Property Act.

10. CHARGE IN FAVOUR OF A WIDOW ON ACCOUNT OF HER RIGHT OF RESIDENCE.—Under the Hindu Law, a widow cannot assert her right of residence in a house which has been sold away, unless a charge is created in her favour prior to the sale. *Gangabai* v. *Jankibai.*[18] By act of parties such a charge can be created. It should be now provided that such a charge exists by operation of law.

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SUMMARY OF ENGLISH CASES.

BEVAN *v.* NIXON'S NAVIGATION CO., (1929) A.C. 44: 98 L.J.K.B. 26.

Workmen's compensation—Collier—Disablement from miner's nystagmus—Consequent inability to work at the face—Subsequent recovery and fitness to work only at the surface—Inability to obtain employment at the surface—Amount of compensation—If as on total or partial incapacity.

A collier skilled to work at the face of the mine contracted the industrial disease of nystagmus which rendered him unfit for work at the face. He was for a time paid full compensation but as he subsequently improved in health and became fit for work at the surface, the employer applied for reduction of the compensation on the ground that the workman was then "able to earn wages" by employment at the surface. The arbitrator had found that though the miner was physically fit for work at the surface, yet he could not in fact get surface work in the market on account of labour conditions.

Held, by the majority (Viscount Dunedin, Lord Phillimore and Lord Carson)) that "able to earn" in para. 3 of the 1st schedule of the Workmen's Compensation Act, 1906, only means that he is in such a physical condition as to be able to earn and that alone and does not include the proviso of employment if the workman fairly attempts to get it and that the later Acts of 1923 and 1925 further confirm this construction.

18. (1920) I.L.R. 45 B 337.

Cardiff Corporation v. *Hall*, (1911) 1 K.B. 1009 approved.

Per *Lord Shaw* and *Lord Blanesburgh* dissenting.—The measure of damages given in the statute is not the difference of earning *power* but the difference *in fact* between what was earned in wages before the accident and what he is earning or is able to earn after the accident, meaning by "able to earn" not mere physical ability to *work* but to *earn* in fact in the market.

VISCOUNT TREDGAR *v.* HARWOOD, (1929) A.C. 72.

Landlord and Tenant—Lease—Lessee to insure in "Law Fire Office or in some other responsible office to be approved by lessor"—If lessee can insure with some other responsible office against the will of the lessor and when Law Fire Office practicable—If lessor can withhold consent arbitrarily—Reasonableness, what is.

The action was brought for possession of a leasehold on the ground that there had been a forfeiture of the lease by reason of a breach of covenant by the lessee's assignee in that he failed to insure the premises in the Law Fire Office. The material portion of the covenant was: "The lessee shall and will insure and ever after....keep insured the said messuage.... demised against loss or damage by fire....in the Law Fire Office or in some other responsible office to be approved by the lessor." The lessor was the owner of many hundreds of houses and intended all his houses to be insured with the same office for convenience and on that ground refused to approve of the respondent's insuring the messuage with the Atlas Company, though admittedly a responsible office. The question arose if under the covenant, insurance with the Law Fire Office was obligatory and the lessor could withhold approval without assigning any reasons therefor.

Held, by the majority (*Lord Blanesburgh* dissenting) that the case was one of one sound office being named, with the alternative given of another responsible office, it being a condition precedent to the alternative being resorted to that the lessor approved of that office. The lessor's refusal need not be reasonable or for justifiable causes. Cases where there is a special clause to the effect that the consent shall not be withheld unreasonably stand on a different footing. Further the lessor acted reasonably in insisting, on grounds of business convenience, that all his houses shall be insured with one office and in deciding reasonableness, motives

of convenience and interest which affect the lessor are to be considered and not those which affect somebody else.

Lord Blanesburgh.—The gist of the covenant is that the office selected by the lessee and tendered for approval shall be responsible. The lessee is given the option of fulfilling his obligation either (*i*) by insuring in the Law Fire, or (*ii*) by insuring in some other office approved by the lessor, the only preference for the Law Fire Office being that no approval is necessary for insuring with it. The reason for refusal of consent must be relevant to insurance protection and not extraneous to it.

MEDWAY OIL AND STORAGE COMPANY *v.* CONTINENTAL CONTRACTORS, (1929) A.C. 88.

Costs—Claim and counter-claim both dismissed with costs—Principle of taxation—Whether costs can be apportioned.

Where the plaintiff fails with costs in his claim and the defendant with costs in his counter-claim, and evidence is given of matters in controversy common to both claim and counter-claim, the duty of the Taxing Master is not, in the absence of specific directions by Court to that effect, to apportion the costs but to treat the claim as if it stood alone and allow only such extra costs on the counter-claim as were occasioned by the counter-claim and would not have been incurred but for the counter-claim. The proper mode of taxation in such a case is to give the defendant all costs incurred in resisting the claim, depriving him only of any costs which he has incurred exclusively in supporting his defeated counter-claim. This principle applies just as much where claim and counter-claim have failed as where both have succeeded.

ENGLISH INSURANCE COY. *v.* OFFICIAL RECEIVER AND LIQUIDATOR OF NATIONAL BENEFIT ASSURANCE COMPANY, (1929) A.C. 114: 98 L.J. Ch. 1.

Insurance (Marine)—Agreement between two companies—Participation agreement—Participation in profits and losses—No notice to assured of this agreement—No stamped policies issued by N. Co.—Agreement, if valid and enforceable.

Two Insurance Companies (which may be referred to as E. and N.) entered into an agreement called a *Participation* agreement by which it was *inter alia* provided (i) that the N. Co. shall be entitled to and shall accept a certain share in all the marine risks undertaken by the E. Co., (ii) that the N. Co. was to

have a share in the net premiums, salvage and other benefits received by the E. Co. and should bear its proportionate share of losses, (iii) that the E. Co., alone should settle all claims arising under its policies without reference to the N. Co., (iv) that the N. Co., should pay the E. Co., commission on (a) the net premiums paid or allowed to the N. Co. and (b) the profits derived by the N. Co. from the business under this agreement. This agreement was acted upon in honour by the two companies. There was no mention of the N. Co. in the policies issued by the E. Co. The N. Co. subsequently went into liquidation and when the E. Co., sought to prove in the liquidation in respect of claims arising under the agreement, the official liquidator rejected the claim on the ground that no stamped policy of insurance was ever demanded by or issued to the E. Co. in respect of the risks coming under the agreement.

Held affirming the Court of Appeal.—The agreement, though termed a participation agreement was an ordinary re-insurance agreement which required to be stamped. The test of whether it is a reinsurance or not is whether or not the reinsurers or the alleged reinsurers have assumed a contractual liability to the original assured and there is not, and it could not have been intended to create by this agreement, any contractual liability between the original assured and the N. Co. It is neither a partnership, nor a joint venture nor even an agreement to share the risks as between the two companies.

Per Viscount Sumner.—Even as a partnership agreement, it is difficult to see how it would have saved the parties from the application of the Stamp Act.

CANADIAN SPOON COTTON COMPANY, LIMITED *v.* CITY OF MONTREAL, (1929) A.C. 137.

Canada (Quebec)—Municipal Taxes—Resolution of Town Council exempting a prospective manufacturer—Validity of—Art. 4559 *of the R. S. Quebec,* 1888.

The action was brought by the Town Council of Montreal for recovery of Municipal taxes from the appellant Company. The appellant Company was, by a resolution of the Council exempted from taxation on the terms, among others, that it should commence to erect a mill within four months, which was duly erected. Objection was taken to the resolution and the contract that at the time they (resolution) came into existence the appellant Company was not "a person who carries on any industry,

trade or enterprise" within the meaning of Art. 4559, inasmuch as it was then only *intending* to establish a spinning mill.

Held, the words, as well as the purpose of the exemption, *viz.,* encouraging trade within the Municipality, indicated that it referred to prospective traders rather than be confined to those already there.

ADAMSON *v.* MELBOURNE AND METROPOLITAN BOARD OF WORKS, (1929) A.C. 142.

Australia (Victoria)—"Charitable institution"—Meaning of—Melbourne and Metropolitan Board of Works Act, 1915, *S.* 94.

The question raised is if the appellants as trustees of an institution known as Lost Dog's Home in Melbourne are not liable to water tax for water supplied thereto. The exemption from tax was claimed under S. 94 which reads as follows:—"In all the pipes to which any fire plug is fixed the Board shall provide and keep constantly laid on for use without charge . . . a sufficient supply of water . . . for supplying any public hospital or charitable institution or any public pumps, baths and wash-houses that may be established for the use of the inhabitants and paid for out of any city, town or borough rates . . . ."

Held, in construing Acts of Parliament it is a general rule that words must be taken in their legal sense unless the contrary intention appears. The Lost Dog's Home is a charitable institution in the technical legal sense but in the present instance the context and the history of the section exclude that meaning and give it a restricted scope referring only to municipally owned or conducted institutions.

"It is always unsatisfactory and generally unsafe to seek the meaning of words used in an Act of Parliament in the definition clauses of other statutes dealing with matters more or less cognate, even when enacted by the same Legislature. *A fortiori* must it be so when resort is had for the purpose to the enactments of other Legislatures.

In re KEYSTONE KNITTING MILLS TRADE MARK, (1929) 1 Ch. 92.

Trade Marks Act, S. 41—*Registration of Trade Mark—Motion to rectify or remove the entry of the trade mark—Motion filed before seven years of registration—Seven years expired by the time of hearing—Delay not due to the applicants—Whether trade mark rendered valid under S.* 41.

The respondents moved for rectification or removal of the entry in the trade mark register entering the appellants as proprietors of a certain trade mark. By the Trade Marks Act, S. 41, "In all legal proceedings relating to a registered trade mark, the original registration of such trade mark shall, after the expiration of seven years from the date of such registration be taken to be valid in all respects" with an exception in the case of fraud. At the time the motion was launched in Court seven years had not expired but by the time of the hearing of the motion, the period had elapsed. A preliminary objection was raised that as at the date of the hearing, the seven years had elapsed, no objection could be taken as to its validity. Clauson, J., overruled the objection and also held that the Court had the power in order to do justice to antedate or post-date its judgment.

Held, by the Court of Appeal.—The Court sits to determine the rights of parties as existing at the time of the institution of the legal proceedings, whatever form such proceedings might take. S. 41 operates to confer a right upon the registered proprietor of a trade mark and does not merely lay down a rule of evidence or procedure and consequently the words "all legal proceedings" must be construed as relating to legal proceedings commenced after the relevant period of seven years had expired. As regards antedating, the Court of Appeal inclined to the view that the Court could not by antedating its order confer upon itself a jurisdiction which it did not otherwise possess.

Per Lawrence, J.—Assuming that the language of the section were equally consistent with both intentions, it is a sound rule of construction that if, without doing violence to the language employed, a statute can be construed so as to lead to a reasonable rather than an unreasonable result, it ought to be so construed.

DUCKER'S TRADE MARK, *In re,* (1929) 1 Ch. 113.

Trade Marks Act, 1905—'Bona fide *intention to use' in S.* 37, *meaning of—If an intention to use the mark on a contingency,* bona fide.

As a sort of precaution, and in order that she might have something that might be of some service to her if anything unfortunate happened to her husband, and she were thrown on her own resources, the appellant registered a trade mark for a hair dye. She had, at the time of registration, no intention of using the mark herself but only intended to form a company at a later time and transfer the mark to it with a view to its

using it. The question was raised if such a registration was proper and made with a *bona fide* intention to use the same in connexion with the hair dye.

Held, though there can be registration of trade marks with regard to goods not in being at the moment, yet there must be, at the time of registration, a real and present intention and resolve to use it in the immediate future upon or in connexion with such goods. Mere problematical intention or an uncertain possibility is not a '*bona fide* intention' within the meaning of S. 37 of the Trade Marks Act, 1905.

In re SUTCLIFFE, SUTCLIFFE *v.* ROBERTSHAW, (1929) 1 Ch. 123.

Will—Construction —Bequest to G for life and on his death without children to persons entitled as his Next of Kin —Testator's death 1875*—G's death* 1927*—Law determining Next of Kin, one in force in* 1875 *or in* 1927.

A testator bequeathed a share of his residuary estate to *G* during his life and after his death (without children) to the person or persons who, under the Statutes of Distributions of the effects of intestates, would on the decease of *G* be entitled thereto as his next of Kin in case he had then died possessed thereof intestate, the shares also to be determined under the same statutes. The testator died in 1875 and *G* died without children in 1927. The question arose as to the Statute applicable in determining the next of Kin.

Held, by Eve, J.—In the absence of anything in the context to indicate that the testator contemplated alterations in the law of Distributions, he must be taken to refer to the Statutes of Distribution in force at the time when his will came into operation—namely, his death in 1875.

In re A DEBTOR, (1929) 1 Ch. 125.

Bankruptcy—Compromise decree-debt—Petition to adjudicate for non-payment of that debt—Plea debt not real—Power of Court to go behind judgment founded on the compromise—Bankrupt then represented by leading counsel.

Upon the hearing of a petition in bankruptcy against a judgment-debtor for a receiving order on the ground that the debtor had failed to comply with a bankruptcy notice served on him, the debtor pleaded that the debt was not a real one. In the suit which had been compromised and which decree-debt was the one in question, the bankrupt was represented by a lead-

ing and a junior counsel and the compromise was effected with their knowledge.

Held, although before making a receiving order, the bankruptcy Court may go behind a judgment for the purpose of satisfying itself that the debt enforceable thereunder was a real debt, it will not do so unless a *prima facie* case is made out of unfairness or impropriety in the circumstances attending the obtaining of the compromise or judgment.

In re EMERSON MORRILL *v.* NUTTY, (1929) 1 Ch. 128.

Will—Codicil—Construction—Bequest of "residue of money"—Enlarged meaning of 'money.'

By means of a codicil a testatrix bequeathed to her adopted niece "the residue of the money at the time of my death" An originating summons was taken out to determine what property of the testatrix passed under that clause.

Held:—As a general rule money, without any explanatory context, and taken in its primary sense, cannot carry anything more than cash, and possibly money at call; it cannot cover investments or other items of personal estate, and still less can it cover real estate. But, in the context, it may get a wider meaning, even to the extent of taking in the whole personal estate.

In re FORD. *Ex parte* THE TRUSTEE. RESTALL, BROWN AND CLENNEL'S CASE, (1929) 1 Ch. 134.

Bankruptcy—Trade custom—Goods of wholesale furniture dealer with bankrupt for "sale or return"—If in bankrupt's reputed ownership.

At the date of the receiving order, the bankrupt had in his possession goods of the respondent (a wholesale dealer in furniture) sent to him on approval and for "sale or return." They were all exposed for sale in the bankrupt's shop and there was nothing to distinguish them from the rest of the goods in the shop. The bankrupt was at liberty to sell them at any price he chose, his only obligation being to pay to the respondent the price set against each article in the invoice. It was contended that those goods were in the possession, order and disposition of the bankrupt with the consent of the true owner and as such vested in the trustee to be divided amongst the creditors.

Held:—From the practice adopted between the respondents and the bankrupt, an intention appeared that the property in the goods should not pass to the bankrupt until sale. Further that

there was evidence of a notorious trade custom for wholesale furniture dealers to send furniture to retail dealers upon "sale or return" excluding the operation of the reputed ownership doctrine in the event of the retail dealer's bankruptcy.

In re FORD. *Ex parte* THE TRUSTEE. POWELL'S CASE, (1929) 1 Ch. 137.

Bankruptcy—Trade custom—Furniture dealer—Table of a private customer for sale with bankrupt—If in bankrupt's reputed ownership.

A private customer left her table with the above bankrupt with instructions to sell the same at a minimum price, any surplus sale proceeds to be retained by the bankrupt. The table was also exposed along with the other goods in the shop.

Held, no trade custom as in the above case existed exempting such articles of private customers from the reputed ownership doctrine but as the table was not distinguishable from those of the wholesale dealers, it cannot be predicated that the bankrupt's possession of the table was as a reputed owner.

THOMAS *v.* HUGHES, 98 L.J.K.B. 42: (1929) 1 K. B. 226.

Elementary education—Exemption from attending school on ground of employment refused—If the child's being employed in fact a ground of exemption or extenuating circumstance, on a charge for non-attendance.

Under the bye-laws made by an Education Committee, the parent of every child between 5 and 15 years of age shall cause his child to attend school unless there be a reasonable excuse for non-attendance. An application by the parent for exemption from attendance at school on the ground of decent employment of the child was rejected by the authorities but nevertheless the parent did not send the child to school.

On an information against the parent for unlawfully neglecting to cause the child to attend school;

Held, it will be defeating the refusal of the authorities to exempt the child to hold that *employment in fact* is a reasonable excuse and it will not even be an 'extenuating circumstance' enabling the Court to exercise its discretionary powers under the Probation of Offenders Act, 1907.

LEE *v.* MUNRO, 98 L.J.K.B. 49.

Workmen's Compensation Act, S. 4—Dependant, meaning of—Earnings of husband at the time of his death very little—

Consequent dependancy of the wife on the son—Dependant some time before death when he was in full employ—Probability of workman getting employment in future, if to be considered.

The applicant's husband died of an accident while engaged on an odd job for the respondents. He was then in good health. When in permanent employment he was paying his earnings to his wife but after he lost the permanent footing on the death of his master two years before the accident, his earnings being through odd jobs and inadequate, he was not bringing into the family exchequer the cost of his keep and his wife was living on the money contributed by her son. The question arose if under the circumstances the widow could be said to be "wholly or in part dependant upon the earnings of the workman at the time of his death" though she was in fact living on the son's money at the time of the husband's death.

Held, that unless the deceased could be considered to be a broken reed on which his wife could not depend for getting anything, the Court, in deciding whether dependancy exists ought to take into account the facts that actual payments have been made in the past and that there was a reasonable probability that if the deceased had lived he would obtain full employment again and make actual payments to his wife in the future.

REX *v.* CONFIRMING COMMITTEE OF SOUTHAMPTON, 98 L.J. K.B. 62.

Licensing Consolidation Act, 1910—*Application for removal of license—Powers of Confirming Authority to refuse—Whether pecuniary gain to applicant and loss to public of fee for New License a good ground.*

A holder of an 'on-license' for the sale of intoxicating liquor on premises applied for an order sanctioning the removal of that license from its then site to another site a little further off and better situated. The Licensing Justices sanctioned the removal but the confirming authority refused to confirm it on the mere ground that thereby the brewer will get a large increase in the monopoly value without paying anything to the public for it.

Held, that the Authority had a discretion in the matter which cannot be interfered with unless it is contrary to rules of reason and justice or contrary to law. The Authority was entitled to refuse the removal upon the sole ground that the public will thereby lose the fee for a New License.

Per Lawrence, L.J., quoting from James, L.J.—"When once certain words in an Act of Parliament have received a judicial construction in one of the Superior Courts, and the legislature has repeated them without any alteration in a subsequent statute, the legislature must be taken to have used them according to the meaning which a Court of competent jurisdiction has given to them."

JOTTINGS AND CUTTINGS.

Goodness, Cleverness, and the Woolsack.—A curious instance of how the whirligig of time brings in its revenges appears in the legal life stories of Rolfe, afterwards Lord Cranworth, and Bethell, Lord Westbury.

When Maule, J., retired from the Court of Exchequer to the Common Pleas in 1839, Rolfe was content to succeed him and had no thought of greater glory. In 1850, however, he acted as one of the Commissioners of the Great Seal during Lord Cottenham's illness, and on the retirement of Sir L. Shadwell, during the same year, he succeeded him as Vice-Chancellor and was made a peer. Two years later he became Lord Chancellor in Lord Aberdeen's Government, and continued in that office until 1858. During those years the Woolsack was for him no bed of roses, and the cause of his discomfort was none other than Sir Richard Bethell, his Attorney-General, who eventually supplanted him as Lord Westbury. That was in 1861. Four years later came Lord Cranworth's revenge. Following a vote of censure in the House of Commons touching the making of certain appointments, Westbury was compelled to retire, and Lord Cranworth became Chancellor once more. "You see, my Lord, it is better to be good than clever," a great personage is alleged to have said, in offering congratulations on his re-appointment. But the story is by some regarded as apocryphal.—*L.J.*, 1929, p. 33.

Lord Haldane's Reminiscences.—We have more than once since Lord Haldane's death referred to the variety of his great talents in the Law, in Administration, and in Philosophy, and our estimation is confirmed by the interesting series of extracts from his Autobiography which is now appearing in *The Times*. Like others before him—was not Lord Campbell an instance—there was a time when he sought to facilitate his entrance into society

by taking dancing lessons. But he was not, like Christopher Hatton, to dance into the Chancellorship, and the episode, he says, was of brief duration. Chiefly interesting to lawyers is Lord Haldane's account of his early years at the Bar. His association as a pupil with William Barber is commemorated in the edition of "Dart," which bears on its title page the names of Barber, Haldane, and Sheldon; but his career was made when Davey found that appeals in important cases could safely be left to him. There is a touch of tragedy in the story of the appeal that was interrupted by Jessel's death. The doctor, it is already on record, had told him that he was a dying man, but he went on with his work to the end. There are probably not many now who remember Haldane in practice at the Bar, but it was his grasp of legal principles then which enabled him at a later time to deliver such a judgment as that in the Birkbeck Building Society's case. Pecuniarily his progress was not so rapid as "F. E. Smith's." Only 31*l.* 10*s.* in the first year; then 109*l.* and 160*l.*, and in the fourth year about 1,100*l* Lord Birkenhead's figures, he has told us, were 120*l.*, 1,200*l.*, 3,100*l.* and 4,200*l.* We need not carry the comparison further, but Haldane had reached nearly 2,500*l.* when he gave up his junior practice and between 15,000*l.* and 20,000*l.* when he left the Bar for Ministerial office. This came near the figure which has been given for other advocates of recent times whose names and cases were thought to appeal more to the public.—*L J*, 1929, p. 41.

Payment for Convictions!—We find it difficult to credit the report, which has appeared in several lay journals during the past week, that a system has been in force in Carmarthenshire for many years, under which, where solicitors appear on behalf of the police in summary cases, they receive no fee unless a conviction is obtained. But there seems to be no doubt as to the correctness of the report, for the Llanelly justices have formally protested against the practice to the Carmarthenshire Police Committee in language which is by no means too strong:

> "We venture to think it distinctly reprehensible," they say, "that the remuneration of prosecuting solicitors should be dependent on a conviction being obtained, and we ask for advocates properly engaged to appear for the police (as often necessary and advisable) to be paid their fees even if the proceedings do not result in a conviction."

We gather that after a discussion, during which the chief constable supported the present system, the Carmarthenshire

Police Committee referred the matter to the finance committee of the Carmarthenshire County Council. It cannot be too plainly stated that the matter is not one of finance at all, but is a matter of principle of great importance. We are, as at present advised, of opinion that a solicitor who accepted instructions to prosecute for the police on the footing that he should receive no fee unless the accused were convicted, would be liable to disciplinary action by the Law Society on the ground of professional misconduct. But the importance of the matter goes far beyond this; it is well recognised that it is to the public interest that advocates should have no pecuniary interest in the result of litigation; and if this is true of civil proceedings, how much more is it true of criminal proceedings where the advocate is engaged to prosecute. The Carmarthenshire practice in this respect must be changed.—*L.J.*, 1929, p. 42.

Professional Amalgamation?—It is shocking to think of an Archbishop awaiting his turn for a "soup" at the Old Bailey; but if a clergyman who had been called to the Bar might follow concurrently the two occupations, such an event is not inconceivable. A clergyman-barrister has, indeed, had the temerity to ask the Bar Council whether he might do it; and the Bar Council has replied of course, and in effect, "Certainly not."

The number of medical practitioners who have been called to the Bar is much greater than the number of men in Holy Orders who have so qualified. Why, it may be asked, should not every professional man be required to qualify in Religion, Medicine and Law? The convenience of such an arrangement is obvious. The dying layman might have his last pill, advice as to his last will and testament, and the last religious rites from the same man; and there was a time in our history when a clergyman could, and did, perform all these services.

Consider also another advantage. There is at the moment a serious shortage of priests and an equally grave superfluity of lawyers. An easy transfer and adjustment would be a great relief. Nevertheless it is a change which I cannot recommend; and I respectfully agree with the Bar Council, and for the same reasons.—*L.J.*, 1929, p. 53.

Court Furniture at Home and Abroad.—Were it not for the courageous and indignant voice of His Honour Judge Crawford, crying out continuously for such necessaries as an adequate chair, the general public would

be unaware of the extreme difficulty of obtaining a decent piece of furniture for a court of law. Legal practitioners, and officers, of course, have long been aware of the fact. Courts without law books and without proper accommodation for lawyers, litigants and witnesses—such shortcomings have long been the unexplained commonplaces of legal life and environment in this country.

It is therefore gratifying to observe that in Paris things are no better. But, according to the Paris correspondent of a London paper, there are signs that the Palais de Justice is beginning to move with the times; it has been decided to put a telephone into the office of the public prosecutor. Not only so, but there is a rumour that the Council General of the Seine has prepared a plan for the thorough overhauling of all offices and office furniture in the Palais de Justice.

This last rumour has been received in France with general caution and local incredulity. There, as here, the official view appears to be that discomfort in the Courts is essential to wakeful efficiency.—*L.J.*, 1929, p. 53.

The General Meeting of the Bar.—A correspondent writes: "The Bar of England meets once a year, in Hilary Term, to talk about itself. Sometimes the proceedings are enlivened by debate; this year there was no debate. One notice of motion had apparently been handed in, but the subject of it was not disclosed, and the meeting was told that it had been submitted to a special committee for consideration. On the spectacular side, therefore, this year's proceedings were shorn of any particular attraction. But for all that the occasion was by no means uninteresting. The personality of the Attorney-General counted for a great deal, and the cordiality of his reception showed unmistakably that Sir Thomas Inskip is highly popular. Moreover, he 'looks the part' so completely, and his speech was a model of precision, tact, and discretion. There was a sly touch of humour in the allusion to congresses of members of the Bar; can it be that the merry twinkle originated in the learned chairman's memories of congresses of another sort? Anyway, the alternative to holding a congress of lawyers, that of inviting distinguished members of the profession in other countries to visit the Inns of Court, seems altogether admirable."—*L.J.*, 1929, p. 59.

Perjury and Divorce.—The high frequency with which perjury is committed in the Divorce Court may be an indication that the Divorce laws or the rules of evidence are in need of amendment. In no branch of the law can it be said that the current standards of social conduct are in such direct conflict with the obligations of a man's oath in the witness box. A statement of one aspect of the matter is that if it is necessary in order to save a woman's reputation, a gentleman will never hesitate to commit perjury; and that he who in such a case tells the truth is socially branded and boycotted as a cad. There can be no doubt that the judges and the magistrates are fully alive to the distressing conflict between the social and the legal code; and it is only in the rarest and clearest cases that prosecutions are instituted. Perjury is defined in 182 Geo. 5, c. 6:

"If any person lawfully sworn as a witness or interpreter in a judicial proceeding wilfully makes a statement material in that proceeding which he knows to be false or does not believe to be true he shall be guilty of perjury."

—*L.J.*, 1929, p. 61.

Prosecutions for Perjury.—A drastic way out of the difficulty would be to make certain persons incapable of giving evidence; another, to make certain kinds of evidence inadmissible either on affidavit or in the witness box; a third, to enact that certain false statements should not be deemed to be perjury. Before the propaganda of Bentham and his fellows prevailed, plaintiffs and defendants were not allowed to give evidence, on the ground that, where the parties had such a vital interest in the result, the conflict between the desire to win and the obligations of an oath was too unequal; and that in such circumstances the truth could not reasonably be expected to emerge. The view of Bentham, which was ultimately accepted, was that such considerations, while undoubtedly affecting the value and credibility of the evidence, did not render it worthless. But when Parliament allowed plaintiffs and defendants to give evidence, it cannot be supposed that they expected a fundamental change in human nature. And the fact that glaring and obvious perjury—especially in divorce cases—regularly goes unprosecuted, shows that the difficulties of the position are appreciated by the authorities.—*L.J.*, 1929, p. 61.

Foreign and English Bars.—The internationalising influence of the League was bound to affect in time the legal fraternities of the Nations; and negotiations and friendly interchanges have

taken place between the French and Belgian Bars on the one side and the English Bar on the other. It was in December, 1924, that the invitation to consider the formation of an international federation of Bars was first extended to the English. The invitation was, for strong reasons, regretfully declined; and the invitation was again given in 1927. The Bar Council did not act hastily; they appointed a Special Committee to investigate and report. Vaughan-Williams, K.C., crossed the Channel and attended a meeting as English "Observer." In due time he reported to the Special Committee; the Committee reported to the full Council; and on February 21, 1928, Sir Douglas Hogg replied to the Director of the International Institute of Intellectual Co-operation, Paris, declining the invitation, and, apparently, for the same reasons as before.

The inability of the Council to accept the invitation was expressed in the most friendly terms; helpful suggestions were made, and future co-operation with the Union Internationale des Avocats was regarded as a hopeful possibility. Moreover, an English "Observer" was suggested for future meetings; the objects of the Union were applauded; and Sir Douglas concluded with a reference to his respected confrere: all in the best Locarno spirit.—*L.J.*, 1929, p. 71.

Wives—An Exploded Theory.—Judge Parry has observed that the idea of the chattelhood of wives still lingers in the minds of some of our judges. This is not very surprising, for the ancient theory still lives and reigns in our law of torts and in the rules governing the assessment of damages in matrimonial causes.

The truth is, however, that such survivals of the chattel theory as exist are all, or nearly all, to the advantage of women. And as for that High Court Judge's remarks to a co-respondent, that if he had stolen the petitioner's watch instead of his wife he might have been sent to gaol, there is nothing in it. He might have spoken in the same manner to the wicked woman who had stolen another woman's husband. To the author of "The Law and the Gospel" I would suggest that the possessive idea in the Judge's mind is that contained in the Song of Solomon, when the woman asserts that the Beloved is hers and she is his.

Financially, too, the injured wife almost invariably fares better than the injured husband in divorce court assessments;

just as the woman enjoys an enormous advantage in actions for breach of promise. The practical difference is that the value of a man is put at a much higher figure than that of a woman, for the simple reason that he is worth more in the sense that he has more money, or can earn more. Wives are not chattels; and it is the man who needs protection against such of those chattel theories as still survive in our law.—*L.J.*, 1929, p. 71.

The Mediator-Judge.—The fact that lawyers would thereby be deprived of the fees which they would otherwise have earned is of course a matter of no moment; one has sadly to admit that if fees were abolished altogether the people would rejoice awhile; nor would many tears be shed if our noble profession were thereby reduced to poverty and extinction. When it was too late men would discover (alas!) how essential are legal men to the well-being and good governance of England. Yet it would undoubtedly be good for the profession and good for everyone if court-fees and other legal costs were reduced.

But if men are to have their law for nothing this idea of the mediator-judge is surely no solution; one man as mediator and another as judge, perhaps, but not two-in-one. For what is the position as indicated by Sir Edward? The judge-mediator has heard the parties, and, of course, formed an opinion of the merits. If the parties fail to agree, they come before him in his capacity as judge, his mind affected, and his judicial quality impaired, by what has already occurred during the conversations. It will never do.—*L.J.*, 1929, p. 89.

Why Lawyers Fail in Parliament.—I have discovered at last the reason why so many lawyers are comparative failures in the House of Commons, and why in State affairs all barristers are vain. It is a hard saying for M.P.'s, but they must take it with such fortitude and incredulity as they may deem expedient.

Mr. Archer Polson, of Lincoln's Inn, said it in a book published in 1858. It is not to be denied, said he, that the habits of forensic oratory do not qualify, or rather do in some degree disqualify, an individual for success in Parliament. Wit and humour, so foreign to the severe reasonings and close deductions to which the lawyer habituates himself, are the prime elements of success in the House of Commons. And he refers to Sheridan's alleged observation that, before he had been many days

in the House, he discovered that three-fourths of the members were fools, and all loved a joke. So he determined not to shock them with too much severity of argument and to amuse them by a sufficient quantity of humour.

Mr. Polson, of course, when he referred to lawyers, may have been thinking only of the hirsute intellectuals of Lincoln's Inn. Otherwise it was a severe blow for the House to be told, in effect, that their mental quality was inferior to that of a jury at the Old Bailey, or even a common jury in the High Court.—*L.J.*, 1929, p. 89.

U. S. Judge Expelled.—Carlos Hardy, one of the two Judges of the Los Angeles Criminal Court, has been expelled by the American Bar Association for accepting 500*l.* from Sister Aimee McPherson for legal advice when she was in difficulties over her kidnapping case.

While declining to reveal all the facts in the case, the Association's Executive Committee decided that he violated the canons of the Association, which prohibit the acceptance of pecuniary or other obligations from those whose interests are likely to be submitted to him for judgment.

This is the first time that the Bar Association has taken disciplinary action of this kind. It followed a complaint from the California Bar Association, which found that it lacked jurisdiction to penalise the Judge, who contends that the unsolicited fee represented legal advice he had given Sister McPherson before she was accused of a conspiracy to defeat justice.—*L.J.*, 1929, p. 95.

Jurists to Meet at Geneva.—In order to prepare the way for a World Conference on the Codification of International Law under League auspices, a special committee of jurists met on January 28 at Geneva.

Sir Cecil Hurst, the senior legal adviser to the Foreign Office, represents Great Britain on this committee, whose first business will be to examine and collate the replies of some twenty or more Governments to a questionnaire recently addressed to them. The points covered by the replies include:—

(1) Nationality;

(2) Territorial Waters; and

(3) The Responsibility of a State for damage caused on its territory to foreign life and property.

The differences between the British, Continental and American standpoints are very considerable (says *The Daily Telegraph*) as regards both 1 and 2. Hence the difficult cases which occasionally arise in connection with persons possessing two or three nationalities, or, on the other hand, no nationality at all. Similarly, while British maritime law limits the extent of territorial waters to three miles, other Powers claim jurisdiction over a distance of six or even twelve miles from their shores.

The consideration of the third problem mentioned above was prompted originally by the Corfu incident of 1923, which followed on the murder by brigands of an Italian General on the Albano-Greek frontier,—*L.J.*, 1929, p. 95.

The New Lord of Appeal.—The Appellate Jurisdiction Act, 1929, which provides for the appointment of an additional Lord of Appeal, received the Royal Assent on Tuesday, and the appointment of Mr. Justice Tomlin to fill the office was immediately announced. As though to give Sir Thomas a happy start in his passage to the highest Court, his appointment was one of the first papers signed by the King since the commencement of his illness. But that is only a coincidence, though a happy one. More important it is that the appointment will be warmly approved by the profession. It had been considered as likely, but there were other Judges, senior to Sir Thomas—who has been a Judge only since 1923—and eminently fitted for the work of Final Appeal, who might well have been selected, and the appointment was by no means a foregone conclusion. The promotion of a Judge of first instance to the House of Lords, without taking the Court of Appeal on his way, is unusual, though not unprecedented. It happened half a century ago in the case of Lord Blackburn, and a more recent instance is that of Lord Parker, who went from the Chancery Division to the House of Lords in 1913, and who did distinguished judicial work there and in the Privy Council during the war. The loss occasioned by his unexpected death is not yet forgotten. A more signal instance of promotion was that of Lord Macnaghten, who went straight from the Bar to the House of Lords. Mr. Justice Tomlin has shown himself as a Judge clear and firm, but withal courteous and kindly; and the Chancery Bar will only be consoled for his loss by the knowledge that the appoint-

ment, by sending Sir Thomas Tomlin to join Lord Blanesburgh, doubles the Equity side in the House of Lords.—*L.J.*, 1929, p. 97.

Labour and the Lord Chancellorship.—In last week's issue of *Britannia*, Lord Birkenhead writes on "The Labour Party and its Leaders." So far as such an article deals, as does this one, with the general leadership of the Labour Party, it is inappropriate for comment in such an organ as *The Law Journal;* but the possible advent of a Labour Government in the near future, as the result of the coming General Election, makes it inevitable that the difficulties which would face a Labour Prime Minister in finding a Lord Chancellor should be the subject of consideration among the profession. In 1923 Mr. Ramsay MacDonald was so fortunate as to have Lord Haldane available, and his appointment solved what must otherwise have been a serious difficulty. Lord Haldane has gone; and the choice of a Labour Lord Chancellor will be a problem not easy of solution. Lord Birkenhead is blunt about it:

"And what is Mr. Ramsay MacDonald likely to do (what, indeed, will he be compelled to do) in order to strengthen his well-disciplined, but very senile team in the House of Lords? He must find a Lord Chancellor. No lawyer known to me who is at this moment an avowed member of the Labour Party could be appointed to the Woolsack without something approaching a public scandal. Possibly the precedent—a very fortunate one—adopted by the late Labour Government when they appointed Mr. Macmillan to be Scottish Law Advocate without political responsibility might be repeated."

In such a case, the appointment of a judge such as Mr. Justice Sankey or one of the very able judges of the Court of Appeal would not, in my opinion, affront either the legal profession or the community as a whole.

Lord Birkenhead has overlooked the fact that Sir John Sankey has been, for exactly a year, a member of the Court of Appeal; but that is by the way. He goes on to suggest that a Labour Premier should make a "non-party" arrangement with his opponents, which would secure the opportunity to the Government of the day of nominating Lords of Parliament for a limited period." Presumably, a non-political Chancellor would be one of these.—*L.J.*, 1929, p. 97.

A Non-Political Chancellor.—We confess to some surprise at finding that Lord Birkenhead apparently regards the appointment of Mr. Macmillan to the Lord Advocate without political responsibility as a "precedent" which only needs applying to the Lord Chancellorship; the two offices do not appear to us to be in *pari materia* at all. And, with great respect to Lord Birkenhead, he does not seem to have envisaged the inevitable results of his suggestion. The Lord Advocate has never been a member of the Cabinet; the Lord Chancellor is one of its most important members. A Lord Chancellor "without political responsibility" could hardly be a member of the Cabinet; for the members of the Cabinet have a joint responsibility for the policy and proposals of the Government, and must support them in Parliament. With a Chancellor who was not a member of the Cabinet, it would be necessary that the political side of the functions now discharged by the Lord Chancellor of the day should be placed either upon the Attorney-General or upon a Cabinet Minister who would, in effect, be a Minister of Justice; and since a Labour Government could naturally not be expected to accept the position that an *ad hoc* arrangement of this kind was to be made whenever they came into power, the almost inevitable result would be, in our view, that the Lord Chancellorship would be shorn of the political side of its functions. It may be that this is a necessary result of the re-orientation of political parties; but it is a change which we should see with regret, and it would be a pity if it came about by attempting to treat an appointment to what can well be treated as a non-political office, as a precedent for an appointment to what has always been an important political post.—*L J.*, 1929, p. 98.

Extra-Judicial Comment by County Court Judges.—Of the *lachrymæ rerum*, judges, both of the High Court and of the lesser tribunals, must frequently, we imagine, become very conscious; and, since it is all to the good that our senses, too, should relapse at times into "cutting remembrances," that our "sorrows, should be kept raw by the edge of repetitions"—extra-judicial comment designed to focus public attention, or to combat the natural inertia of the public conscience, is not only permissible but desirable. But such comment is valuable only in so far as it is the result of an expert diagnosis and of a right gauging of the trend of the "time-spirit." Where it resolves itself into platitudinal criticism by judges entirely unable to "digest the

mixture of our few and evil days," then it had far better be unsaid. And in this latter kind of comment, it seems to us, there is a lamentable and increasing tendency on the part of certain County Court judges to indulge. True, the indulgence has brought them an unusual meed of notice in the daily press. But publicity is accorded the remarks—we are afraid—not because of their acute philosophic import but because of their journalistic value as "copy". They are, indeed, regarded rather as in the nature of public entertainment. And publicity obtained on such grounds is calculated to damage the prestige not only of the particular judges in question, but of the County Court Bench as a whole.—*L.J.*, 1929, p. 99.

Complications of Citizenship.—Three jurists, including Sir Cecil Hurst (Great Britain), out of the five appointed to study the replies received by the Secretary-General of the League of Nations from twenty-seven Governments on questions of international law relating to nationality, territorial waters, etc., have (says *The Daily Telegraph*) finished their first week's work. The other two jurists are still absent, one being ill, and the other unable to leave his country at present.

These jurists hold their meetings in private, and are still engaged in their study of the replies from the various Governments on the question of nationality, some of which are lengthy documents, although the Italian Government is said to have dealt very summarily with the League questionnaires submitted to it.

The British Government, after referring to its naturalisation laws, mentions, concerning the adoption of children by British persons, the new legislation. which came into force in Great Britain in 1926, stipulating that an adopted child should be a British subject.

His Majesty's Government points out the desirability of uniformity in the nationality legislation of the different countries as regards the effect of marriage upon a woman's nationality. As things are at present, it can happen that a British woman who marries a foreigner, and, according to British law, thereby loses British nationality, can be deprived of any nationality if the national law of her husband does not confer her husband's nationality upon her.

On the other hand, a British woman who marries a foreigner, and consequently loses British nationality, can, on being left

a widow, or in case of divorce, regain her British nationality by applying to the Home Secretary, and without the necessity of fulfilling the usual period of residence in Great Britain prescribed for ordinary cases of naturalisation.—*L.J.*, 1929, p. 116.

The New Chancery Judge.—The vacancy on the Bench of the Chancery Division due to the translation of Mr. Justice Tomlin to the House of Lords has been filled by the appointment of Mr. Fairfax Luxmoore. The appointment had been generally anticipated; it is very popular with the Equity Bar; and will, we have no doubt, prove successful. Mr. Luxmoore, who was called to the Bar in 1899, rapidly acquired a large practice and comparatively soon after taking silk in 1919 he joined the select band of "specials". He has had a steadily growing reputation, especially in witness actions, and his wide experience and—may we add—genial manner which has endeared him to a host of friends will make him a valued addition to the Bench. The biographer of Lord Bowen speaks of "the transition from the excitement of advocacy and from the participation in a succession of important and interesting cases to the uneventful tranquility of the Bench" as producing a painful reaction. It may be so, though we have not noticed that newly—made judges show any sign of it; and there are judges—we gather that Mr. Justice Luxmoore is one—to whom additional facilities for golf may not be unattractive.—*L.J.*, 1929, p. 117.

The Monroe Doctrine.—Two very interesting articles on the Monroe Doctrine by Prof. S. de Madariaga, which appeared in *The Times* of the 6th and 7th instant, lead up to the conclusion that its practical result at the present time is to instil in the South American States a fear of the hegemony of the United States. The situation for which the doctrine was devised—the protection of America from European interference—has been reversed. "Born to errect the United States as a bulwark in defence of the American nations against Europe, it has evolved so as to drive American nations to seek in Europe a bulwark against the United States." Possibly this is true, for the doctrine is not static, true, yesterday, to-day and forever; it is, like all things outside Tennessee, evolutionary, and has passed and is passing through successive stages. Dr. Louis M. Sears, whose *History of American Foreign Relations* was reviewed in

our columns last year (66 L J., p. 175), describes it as the one ingredient in American foreign policy which every citizen knows by name, though few define it alike. According to Prof. Madariaga, the citizen is content to leave its working to the Administration, with the result in "parody of the English dictum that the liberty of the subject has dwindled down from precedent to precedent, that the scope of the Monroe Doctrine has broadened out from President to President." Knowledge of the doctrine may be as inexact here as in America, but its origin and effect have been well stated by Mr. Wyndham A. Bewes in a paper, *The Monroe Doctrine and Entangling Alliances*, read before the Grotius Society in 1927 and published in last year's volume—Vol. 13 of the Transactions of the Society. The doctrine itself finds a place in Art. 21 of the Covenant of the League of Nations as the leading example of a "regional understanding for securing the maintenance of peace," the validity of which is not to be affected by the Covenant. Perhaps, having regard to the numerous infringements of its original purpose since its enunciation by President Monroe in 1823, the draftsmen of the Covenant would have been as much puzzled as anyone else to state its present scope. But whatever may be the truth of Prof. Madariaga's thesis that South America now sees in it only a mark of the predominance of the United States, for people in general it may be still paraphrased as "America for the Americans."—*L.J.*, 1929, p. 118.

L.J. and L.C.J.—Now that Scrutton, L.J., has declared, *obiter*, that there is such a thing as judicial, as distinguished from other forms of legal humour, and that all the occupants of the Bench indulge in it at times, all of the Bar who were dubious must doubt no more. It is improbable, however, that the L.C.J. will give unqualified assent to this *obiter dictum* of the Court of Appeal, especially that part of it which ascribes to all the judges this humane and humorous indulgence.

Yet the L.J. on this very occasion essayed to give an example of his meaning. The appeal in *Hobbs* v. *Tinling and Co.*, was based largely on comments alleged to have been made by the L.C.J. during the trial, and Birkett, K.C., was engaged in the argument of complete justification. "I have in mind," said the L.J., "the well-known authority which says that it is as important that justice should seem to be done as that, in fact, it should be done." Gentle reader, who was that well-known

authority? We know that if he was not the original author, the L.C.J. adopted that saying with universal approval.—*L.J.*, 1929, p. 128.

Legal Maxims.—The theory that the King can do no wrong has played an important and often beneficial part in the development of our Constitution; there is about it a brevity, a dogmatic and picturesque simplicity, which appeals to the vast multitude who only read while they run. "Hearsay is not evidence"; "A man is innocent until he is proved to be guilty," are others of the great company of simple legal sayings for the man in the street, like so many other saws, they are, of course, very inaccurate and misleading; subject to a multitude of distinctions, exceptions, qualifications and explanations. But they convey an idea which is true in the main, and therein they compare most favourably with many clauses of the Local Government Bill and other modern enactments, with their accompanying Statutory Regulations and the explanations so frequently appertaining thereto.—*L.J.*, 1929, p. 146.

And their Abuse.—Now, partly from the theory that the King can do no wrong, a mass of Crown practice and procedure has accumulated; vexatious, unnecessary, and annoying to His Majesty's liege subjects, and sometimes operating against them with great harshness and injustice.

This has been recognised by all authorities outside the Government Departments, and by many of the ablest of those within. The merchants feel strongly on the matter, as of course; and the Bar Council and the Council of the Law Society are unanimously in favour of reform. A council of the Judges has not been called to deal with the matter; and I respectfully ask the Lord Chancellor, Why not? For there is upon him and others a statutory obligation to summon them together once a year; and here is a topic well worthy of their best attention and upon which their opinion would greatly outweigh that misty and undefined opposition to which the Attorney-General so darkly referred when he revealed the Government's attitude towards Sir Henry Slesser's Bill. The reform is obviously inevitable; but who is the inexorable Mr. Jorkins to whose objections the Attorney-General and the Government attach so much importance?—*L.J.*, 1929, p. 146.

The Vindication of Mr. Josling.—Another matter, suggested by the famous legal maxim, is this matter of the vindication of Sergeant Josling, who was ordered to resign in 1922 because he had brought "false charges" of corruption in the police involving charges against ex-Station Sergeant Goddard. Recent revelations made it clear that on the vital matter Sergeant Josling was right and the Home Office was wrong. And now the Home Office, viewing the matter in the light of subsequent events, has declared to Mr. Josling that "it is clear to the Home Secretary that your being required to resign should not be regarded as implying any reflection upon your personal character."

This confession—for such it indubitably is—of the Home Office is an event of tremendous significance and importance, and reflects great credit on Sir William Jaynson Hicks. For the Home Office was under no legal obligation to make amends. And in every Government Department there is, or has hitherto been, a fixed idea that in its official capacity, in the legal or in any other sense, a Government Department can do no wrong; and it would take something much more cogent and coercive than the light of subsequent events to bring it, even thus proudly, to the Confessional.—*L.J.*, 1929, p. 146.

Infallibility and Justice.—Yet this historic document, this momentous precedent, revealing a Government Department in the very act of climbing down, is not wholly free from defect and deformity. How could it be? For my part, I cannot blame the Department for trying to cover itself with a wretched rag of righteousness when, with total irrelevance, it reminds Mr. Josling of his observation at the conclusion of the proceedings which led to his enforced retirement: "All I can say is that I express my sincere regret for my impetuous action and for the trouble I have caused. That is all I can say."

An absence of impetuosity on the part of the Home Office will, in the circumstances, be forgiven. We in the Law are accustomed to appeals and reverses; we hear the citizen from time to time make a full and ample apology in Court. But in the Army, Navy, Police and Civil Service this sort of thing does not occur. It is bad form; it is not done. Therefore it is a great thing that one of the oldest, and perhaps the most important of the Government Departments, holding the doctrine of its own infallibility, has yet indicated to Mr. Josling

(in the light of subsequent events) that a mistake was made; and has acted accordingly.—*L.J.*, 1929, p. 146.

Delay in Indian Appeals.—Delivering the opinion of the Judicial Committee of the Privy Council on February 15, in an appeal from Madras, Lord Atkin said that the judgment of the High Court was given in 11 suits of ejectment brought by the respondents against the respective appellants. Seven out of the 11 suits were instituted in 1913, and the only question so far decided and the only question before the Board was whether the Civil Court in which the actions were brought had jurisdiction and not, as the appellants contended, the Revenue Courts. The determination of that question had required recourse on seven different occasions to the Courts and had occupied nine years in Madras. The case had taken six years more to reach the Board. Their Lordships deplored that delay, which was obviously much greater than was necessary, and reached the borders of a scandal. They did not, however, propose to recapitulate the various stages in which the case toiled to and fro between the Lower Courts and the High Court, or to apportion blame.—*The Times.*—*L.J.*, 1929, p. 151.

Charges against a New York Judge.—The Judiciary Committee of the House of Representatives has decided (says *The Times*) to transmit to the Attorney-General for investigation charges brought recently in the House by Mr. Fiorello La Guardia, of New York, against Mr. Francis J. Winslow, a Judge of the Federal District Court of New York. Pending the outcome of the investigation, Mr. Winslow has asked to be relieved of duty.

The charges against Mr. Winslow were contained in a resolution which accused him of nepotism and favouritism in awarding receiverships in bankruptcy, intimidation of witnesses, harassing lawyers, and other acts, which, it was alleged, had given rise to a "general rumour and impression among members of the Bar and public of unjudicial, unfair and improper conduct on the part of the said Judge Winslow." These charges are largely an outcome of alleged scandals in connection with the mismanagement of estates in bankruptcy in the New York Federal District. The resolution moved by Mr. La Guardia asked the Judiciary Committee to investigate Mr. Winslow's fitness for office and report its findings, together with recom-

mendations for exoneration, condemnation or impeachment.—*L.J.*, 1929, p. 151.

CONTEMPORARY LEGAL LITERATURE.

The Harwad Law Review for November, 1928, contains a very instructive article by Mr. Percy H. Winfield on "Public Policy in the English Common Law." His main quest is to see if the English Judges recognise any ideal standard of judicial legislation in tackling new questions arising before them uncovered by statute or case-law.

When Law was in the making, Public Policy, under different names and sometimes under the veil of anonymity, played an important part and pervaded the whole legal system. Whenever a rule of law was felt to be harsh or defective, equity modified it and even long before equity became a separate system, the ideas which lie at the root of it were put in practice by the King's Courts, *e.g.*, writs being adapted by means of fictions to meet new cases. In the 14th, 15th and 16th centuries, Chancellors were mainly guided by public policy and applied it consciously as well. Reason had then its sway and neither statute nor custom could then prevail against the law of reason.

Judicial authority treats Bracton as the source of the doctrine. But we get a glimpse of it in Littleton when he gives it as a ground of any particular rule which he states that the adoption of the contrary principle would be "inconvenient" or "against reason." This theory of "inconvenience" or "unreasonableness" was developed by Coke into something more technical and more far-reaching when he stated and emphasised the maxim "*nihil quod est inconveniens est licitum*" which means that it is better that one individual should suffer rather than many be prejudiced. This maxim contained the seeds of the later formal ideas about public policy. Sir Henry Finch, a contemporary of Coke, calls it the "common weal" and Shepherd in his Touchstone refers to certain matters as "being against public good." Lord Chief Baron Pollock equates this to Coke's "repugnant to the State." In the 17th and 18th centuries, the Courts were advancing by somewhat uncertain steps to a narrower application of the doctrine though not to a more definite conception of it. With the development of statutes and case-law, the scope for the free play of reason, convenience and policy became reduced, but even then in the guise of interpreting the old law, old cases were (and are being) read in the light of current no-

tions. Every new decision formed an outpost for further exploration and with the swelling of the statutes and the increase of Parliament's powers with the Revolution of 1688, the doctrine fell much into the background in courts of law.

Several illustrations may be given of parts of the law where public policy has penetrated, *e.g.*, contracts in restraint of trade; rule against perpetuities; rules against sales of offices, marriage contracts and wagers. In the early 19th century the tendency grew of limiting the application of the doctrine of public policy, as it was felt that it would put Judges in a position which Parliament alone could occupy or infect with a virus of uncertainty principles which had long been settled by case-law. Lord Mansfield in *Jones* v. *Randall*[1] indicated that public policy ought to be confined to new cases but the law of nature did not thereby cease to function in Lord Mansfield's time. The history of the Law Merchant, recognition of quasi-contractual liability, notions of the "reasonable man" and a "reasonable price" are all instances of its influence under another name. There have been different views about public policy among the Judges and even by the same Judge on different occasions. Some like Best, C.J. and Burrough, J., felt that courts had gone farther than was warranted and that where such questions were doubtful they ought to be left to the legislature; while others like Abbott, C.J., carried it a step further than before. In 1853 its very life was threatened when 16 Judges fought a pitched battle about it in *Egerton* v. *Brownlow*.[2] In that case, one extreme view would have public policy reduced to a mere guide for ascertaining the object of any particular law. another would have it exalted into an abstract standard of judicial legislation and a *via media* view which verged towards one or other of these extremes. Lord Chief Baron Pollock, whose view proved acceptable to the House of Lords, said that Courts ought not to shrink from applying the doctrine to "any new and extraordinary case that may arise." "All matters relating to public welfare must be decided and determined upon their own merits only. It may be that Judges are no better able to discern what is for the public good than other experienced and enlightened members of the community; but that is no reason for their refusing to entertain the question, and declining to decide upon it. Is it, or is it not, a part of our common law, that in a new and unprecedented case, where the mere caprice of the testator is to be weigh-

1. (1774) 1 Cowp. 17. 2. (1853) 4 H.L. Cas. 1.

ed against the public good, the public good should prevail? In my judgment it is."

The writer of the article here says: "I have read nothing in the reported judgments from *Egerton* v. *Brownlow*[2] to 1928 which departs seriously from the extracts that I have cited above from the Lord Chief Baron's judgment. I respectfully think that it represents what English Law always has been and still is." The writer refers to Mr. Knight's view in 38 L.Q.R. 207 that *Egerton* v. *Brownlow*[2] was followed by a period of scepticism and hesitation in relation to public policy and while agreeing with him that there are some dicta raising that inference, thinks that they merely express a conservative influence. He sums up as follows:—

(1) The attitude of the Bench in general towards public policy is one of cautious acceptance of it. The Judges have often repeated Mr. Justice Burrough's metaphor that it is an "unruly horse" and some have even felt it to be a tiger and refused to mount it at all. It is generally felt to be a very unstable and dangerous foundation to build upon.

(2) Public policy is indefinable. The writer describes it as " a principle of judicial legislation or interpretation founded on the current needs of the community." This definition signifies that the interests of the whole public must be taken into account whereas in many cases what seems to be in contemplation is the interest of one section only of the public. For example, contracts in restraint of trade. The explanation suggested by the writer for this paradox is that the Courts must certainly weigh the interests of the whole community as well as of a considerable section of it, such as traders, and that in those rules there will not be found anything prejudicial to the Nation as a whole.

(3) Public policy is necessarily variable varying with the time, the topic and *the person applying it* (the italics are ours). It is its chief characteristic and its chief virtue. In *Rodrigues* v. *Speyer Bros.*[3] Viscount Haldane has analysed the influence of public policy very carefully. The writer summarises the Viscount's conclusions as follows: "(*a*) Rules which, though originally based on public policy have become so crystallized that only a statute can alter them, for example, the rule against perpetuities; (*b*) cases in which public policy has never crystallized, in which public policy depends on no real legal principle,

2. (1853) 4 H. L. Cas. 1.
3. (1919) A.C. 59.

in which it is accepted as a matter of fact, and in which its application depends on the circumstances of each particular case, for example, cases concerning the legality of waters; (*c*) cases in which public policy has partially precipitated itself into legal rules which, however, have remained subject to its moulding influence in the sense of current national policy, as illustrated by covenants in restraint of trade. In this last field may be previous decisions in plenty, but they cannot be taken to stereotype national policy. Underlying all of them is the legal principle that trade must not be fettered. But what was a fetter one hundred and fifty years ago may have ceased to be so now. Under this head, Lord Haldane included also the general principle that an alien enemy cannot sue in this country. In the realm of contract, some Judges have expressed a decided disinclination to extend public policy any further in the direction of invalidating agreements."

(4) *Limits of public policy.*—It ought not to conflict with existing parliamentary legislation, though it may be usefully referred to in resolving a doubtful point in the interpretation of it. Again where a rule of common law is itself clear, arguments based upon public policy are beside the mark. Public policy is no ideal standard to which law ought to conform. It may, says the writer, answer the question "what is it that the community wants now" but it is dumb before the question "what is it that an ideal community ought to want."

A Note on "Damages for non-delivery" in the *Law Journal* of December 22, 1928, discusses the effect of the decisions in *Kasler & Cohen* v. *Slavouski*[1] and *R. & H. Hall, Ltd.* v. *W. H. Pin (Junior) & Co., Ltd.*[2] on the rule in *Hadley* v. *Baxendale*.[3] The general rule laid down in *Hadley* v. *Baxendale*[3] is embodied in Ss. 50 and 51 of the English Sale of Goods Act, 1893, and in S. 73 of the Indian Contract Act. Cases where special circumstances are expressly provided for in the contract offer no difficulty. Even when they are not so provided for, Courts may sometimes have to assess damages on the footing that knowledge of the special circumstances has to be implied, as where the plaintiff enters into the contract with a view to a sub-contract and which the defendant must be presumed to know. Lord Esher, M. R., in *Hammond* v. *Bussey*[4] extended the rule to the cases of

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1. (1928) 1 K.B. 78.
2. 33 Com. Cas. 324
3. (1854) 9 Ex. 341.
4. (1887) 20 Q.B.D. 79.

sub-contracts not yet actually made at the time of the contract but which will *probably* be made or in the ordinary course of business is sure to be made. This view has been carried to its logical conclusion in *Kasler & Cohen's case*[1] where there was a string of sub-sales, four in all, and in an action for breach of warranty plaintiffs were awarded (1) damages recovered by the last buyer from the last seller, (2) the costs of both sides in that action, and (3) a sum in respect of costs incurred by all intermediate holders, including the plaintiffs, in connection with the claims made against each of them by their respective immediate purchasers. The note extracts the following dicta from *R. & H. Hall, Ltd.* v. *W. H. Pim (Junior) & Co., Ltd.*[3] which carry the matter still further:

Lord Dunedin.—"I do not think that 'probability' as the word is used in *Hammond* v. *Bussey*[4] means that the chances are all in favour of the event happening. To make a thing probable it is enough, in my view that there is an even chance of its happening."

Lord Shaw.—"I would venture to read that as a sub-contract which, in the ordinary course of business, was not unlikely to be made."

Lord Phillimore.—"Those damages which . . . . are, at the time of making the contract, recognised by the parties as those which in the particular case *may* result from the breach."

In ordinary cases of non-delivery, etc., the writer points out that this harshness is mitigated by the other qualification to the above rule, *viz.*, that the plaintiff must take all reasonable steps to mitigate the loss consequent on the breach. The decision in *Kasler & Cohen's case*[1] also qualifies it by saying that the defence to the action must be reasonable. Compare with this note the dicta of the Privy Council in *Hope Prudhomme & Co.'s case*[5] "any damages which they would have to pay to the buyers from themselves on account of the non-delivery of the cargo would be damages which they in their turn could recover as damages from the appellants" and lower down "By virtue of a clause in one of the earlier documents, and which is in conformity with the usual practice in produce markets where there is a chain of sellers and buyers, the damages as ascertained between the last buyer and seller would probably without further litigation form the measure of the damages to be recovered all along the chain."

1. (1928) 1 K.B. 78
2. 33 Com Cas. 324
4. (1887) 20 Q.B.D. 79.
5 (1925) I.L.R. 49 M 1 at 7 (P.C.)

BOOK REVIEWS.

"RESTATEMENT OF THE LAW OF CONTRACTS," by The American Law Institute (Official Draft of Chapters 1—7).

It is needless to expatiate on the usefulness of a book of this kind. The introductory note by the Director shows the extreme care and attention bestowed by the American Law Institute in the preparation of this official draft. Before the final passing of the present draft by the Council of the Institute, the draft went through elaborate legislative procedure. Copies of the tentative draft are said to have been circulated widely among Judges, Lawyers and Teachers of Law and the draft with their suggestions was placed before a conference of the representatives of the Co-operating Committees of the State Bar Associations in Chicago, at which 87 persons appear to have been present besides the officers of the Institute, several members of the Council and all the reporters. It was then placed before the Council for discussion and the result of all that labour is the present official draft. In form, it is like Mr. Edward Jenks' Digest of English Civil Law divided into sections with illustrative commentaries attached to each, but being only a restatement of the law, it does not refer to the leading cases as Mr. Jenks' Digest does. Where the law is uncertain, the draft appears to state what it considers to be the better view, *e.g.*, S. 39 (Appendix, p. 230), S. 45 (p. 233), S. 65, S. 166 (p. 274). The Appendix attached to the book and prepared by the Reporter for contracts contains some useful explanatory notes (with cases) on select sections and also gives the reasons for the statements wherever there is a conflict of authority. The unfamiliarity with the technique of the American Law and the difficulty in ascertaining the exact law on a point has often been responsible for the Judges in India and England deprecating references to the American authorities. It may be hoped that this "Restatement" will go a long way to help the profession in ascertaining the American Law. It is very much to be wished that the Institute will complete the Restatement of the Law of Contracts and give us a similar "Restatement" in other branches of law as well. With the rapid march of civilization, new questions not contemplated by the framers of the Indian Codes come up for decision and much useful aid can be derived from foreign systems of law. The get up of the book leaves nothing to be desired.

It may not be out of place here to express a hope that this example may be followed in India and similar "Restatements" of Indian Law attempted.

THE TRIAL OF J. BLOMFIELD RUSH. Edited by W. Teignmouth Shore. Notable British Trials Series. Published by Messrs. Butterworth & Co., Ltd. Price Rs. 6-8-0.

This is one of the few cases where the prisoner defended himself without a counsel. The story of the daring murders of a father and son, Mr. Jermy and Mr. Jermy Jermy and the attempt at murder of Mrs. Jermy Jermy and a servant woman, all on a single night by the same person J. Blomfield Rush, as told in the introduction to this volume, makes one's blood curdle. The evidence for the prosecution being complete and for the defence comparatively insignificant there was hardly room for the Judge Baron Rolfe to incline otherwise than to a conviction of the prisoner to death by hanging. The defence examination and cross-examination, being handicapped by the lack of a professional adept, led naturally to many defects and to the consequent unfavourable impression on the Jury. But the case for the prosecution was strong enough to create every circumstance against the prisoner. The conduct and behaviour of the culprit through the rest of the days in prison after sentence strikes us as an unique instance where the mind was unchanged even in the face of death. Such is the abnormal mentality of Rush providing the student of psychology much substance for curiosity.—*K.C.*